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OFFICE OF THE SECRETARY

May 15, 2000

EX PARTE

Ms. Magalie R. Salas
Secretary, FCC
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 98-137

Dear Ms. Salas:

Today, Mary L. Brown, Senior Policy Counsel, WorldCom, Inc., submitted the attached letter regarding the Commission's Notice of Proposed Rulemaking in the above-captioned docket to Mr. Lawrence E. Strickling, Chief, Common Carrier Bureau.

As required by Section 1.1206(b)(2) of the Commission's rules, I am filing two copies of this notice for placement in the record of this proceeding.

Sincerely,

Alan Buzacott

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Mary L. Brown
Senior Policy Counsel
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May 15, 2000

Mr. Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Local Exchange Carriers; CC Docket No. 98-137

Dear Mr. Strickling:

On May 8, 2000, the incumbent local exchange carrier (ILEC) members of the Coalition for Affordable Local and Long Distance Service (CALLS) wrote to you regarding the CALLS ILECs' proposal for depreciation relief.[1] The ILECs suggest that they are responding to NARUC's concerns that the ILECs' depreciation proposal would lead to increases in intrastate rates.[2]

The ILECs' new letter, like their original letter, does not in any way limit the ILECs' ability to seek intrastate rate increases in conjunction with depreciation changes. That the ILECs would seek to preserve their ability to increase intrastate rates should not be surprising, given that (1) the ILECs continue to insist that any adjustment associated with changes in the level of their depreciation reserve be recorded "above-the-line"; and (2) the ILECs have already refused, in their comments in this proceeding, to make any commitment with respect to intrastate rate levels.

The ILECs' May 8, 2000 letter makes three statements concerning intrastate rates, none of which provides any protection to intrastate ratepayers. First, the ILECs commit that "they will not seek to recover any portion of the proposed FCC amortization amount by

[1] Letter from Frank J. Gumper, Bell Atlantic, Robert T. Blau, BellSouth, Donald E. Cain, SBC, and Alan F. Ciamporcero, GTE, to Lawrence E. Strickling, FCC, May 8, 2000 (<u>May 8 Letter</u>).

[2] <u>May 8 Letter</u> at 2. In its reply comments, NARUC concluded that "it is disconcerting to the NARUC that signatories to the [March 3, 2000] *Ex Parte* Letter neglected to include any assurances that intrastate rates will not be increased due to actions the Commission would take to provide them with freedom from depreciation requirements." NARUC Reply Comments at 8.

increasing interstate or intrastate prices."[3] This statement simply repeats the "commitment" the ILECs made in their original letter. NARUC and the state commissions commenting in this proceeding have already pointed out the limited value of this commitment, which, by referring to the "FCC" (i.e., interstate) amortization amount, deliberately leaves the door open to recovery of any intrastate amortization expense via increases in intrastate rates.[4]

Second, "in any state jurisdiction that automatically mirrors FCC depreciation rates, the ILECs agree not to seek intrastate price increases to recover the increased intrastate amortization expense . . . ."[5] With this statement, the ILECs would like to leave the impression that they are responding to NARUC's concern that the ILECs could increase intrastate rates to recover any intrastate amortization expense. But the ILECs' "agreement" not to seek price increases in states that "automatically mirror" FCC depreciation rates is meaningless because, to the best of WorldCom's knowledge, there are no states that "automatically mirror" FCC depreciation rates. The Commission should certainly ask the price cap ILECs to provide a list of the study areas that would be covered by this provision of the ILECs' "commitment."

Finally, the ILECs' new letter includes a paragraph that discusses the scope of the ILECs' commitment with respect to those states that have authorized "lives that differ from those prescribed by the FCC."[6] This is the key paragraph of the letter because, as noted above, the vast majority of states - if not all states - have authorized lives that differ from those prescribed by the FCC. In this paragraph, the ILECs do not commit that they will not seek intrastate rate increases. Instead, the ILECs offer only the bland statement that they "do not intend to interfere with the prerogatives of the state commissions or to propose that the FCC's actions should bind the states in matters of depreciation."[7] Nothing in this statement limits the ILECs' ability to increase intrastate rates or to propose intrastate rate increases in state proceedings.

Rather than try to "fix" the ILECs' proposal, the Commission should simply terminate this proceeding. In its comments in this proceeding, WorldCom has shown that, regardless of the conditions or safeguards the Commission might succeed in imposing on the ILECs, depreciation deregulation at this early stage in the development of local

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[3] May 8 Letter at 2.

[4] NARUC Reply Comments at 4.

[5] May 8 Letter at 2.

[6] Id.

[7] Id.

competition would not be in the public interest. Only four months ago, in the Depreciation Order, the Commission concluded that the depreciation rates used by the ILECs for financial reporting were not appropriate for regulatory purposes. There would be no reasoned basis for the Commission to change course and permit all price cap ILECs to use their financial depreciation rates – regardless of the conditions or safeguards that are imposed.

There is certainly no basis for deregulating ILEC depreciation practices under the terms proposed by the CALLS ILECs. Not only do the ILECs insist on leaving the door open to increases in intrastate rates, but their proposal falls far short of the Depreciation Order's waiver framework in all other respects:

- Whereas the Depreciation Order required carriers seeking a waiver of the Commission's depreciation rules to agree to a one-time adjustment to eliminate the differential between their regulatory and financial books, the ILECs are insisting on a five-year amortization. As the Commission explained in the Depreciation Order, only a one-time adjustment can "provide assurance that carriers do not engage in a practice that would disadvantage consumers and competition by using high financial depreciation rates with high regulatory net book costs . . . ."[8]

- Whereas the Depreciation Order required carriers seeking a waiver of the Commission's depreciation rules to agree to a below-the-line adjustment, the ILECs are insisting on an above-the-line adjustment. There is simply no basis for the Commission to allow an above-the-line adjustment: the Commission has already rejected, in the Depreciation Order, the ILECs' argument that the differential between their regulatory and financial books represents a "reserve deficiency."[9] For this reason, as NARUC explains, "the FCC's precedent of above-the-line amortizations for reserve deficiencies is not relevant."[10]

- Whereas the Depreciation Order required carriers seeking a waiver of the Commission's depreciation rules to forego their opportunity to recover the differential between their financial and regulatory books, the CALLS ILECs have said that they will honor such a commitment only in the "context" of the CALLS plan. U S West refuses to make any commitment at all, insisting on its "right" to recover the differential between its regulatory and financial books.

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[8]Depreciation Order at ¶ 26.

[9]Depreciation Order at ¶ 16, 65.

[10]NARUC Reply Comments at 7.

- Whereas the Depreciation Order required carriers seeking a waiver of the Commission's depreciation rules to periodically submit information so that the Commission could maintain realistic life and salvage ranges for use in cost models, the ILECs refuse to provide such data. The CALLS ILECs' refusal to provide this data underscores NARUC's concerns that depreciation relief "will impede competition by increasing UNE and interconnection prices today and will create an opportunity for uneconomic pricing."[11] Increases in UNE-P prices would offset any increased incentives for local residential market entry that may be created by the CALLS plan, if it is adopted by the Commission.

The Commission should reject the ILECs' proposal and terminate this proceeding because depreciation deregulation, particularly under the terms proposed by the ILECs, would be bad for competition and bad for consumers.

Sincerely,

Mary L Brown

Mary L. Brown

cc: Kathy Brown
Dorothy Attwood
Jordan Goldstein
Sarah Whitesell
Kyle Dixon
Rebecca Beynon
Carol Mattey
Ken Moran

[11]NARUC Reply Comments at 9.